

REMARKS / ARGUMENTS

Reconsideration of the above-identified application respectfully requested. Claim 3 has been amended to be in independent form and independent claim 1 has been canceled. The dependency of claim 2 has been changed accordingly. Non-elected claims 16-31 have been cancelled without prejudice. Applicants assert that neither independent claim 3 nor dependent claims 2 and 4-15 have been narrowed with the meaning of *Festo* (*Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co.*, 535 US 722, 112 S.Ct. 1831, 152 L.Ed.2d 944, 62 USPQ2d 1705 (2002)). As no new matter is added by virtue of these claim amendments, their entry respectfully is requested.

Claims 1 and 2 stand rejected under the provisions of 35 U.S.C. § 102(a) as being anticipated by the admitted prior art on page 3. Claims 4-15 stand rejected under the provisions of 35 U.S.C. § 103(a) as being anticipated by the admitted prior art on page 3. Applicant respectfully traverses the rejection and grounds therefor.

Initially, it appears the Examiner's opinion that since "pit and land" data is known that *ipso facto* the invention is known. Such a view of the present invention, however, is materially in error for several reasons. First, the Examiner is expressly ignoring the "pit and land coded message" language in claim 1. This phrase is defined in the application as follows:

"Pit and land coded message", then, for present purposes comprehends data recorded in pit and falls ala CDs wherein the data is unique to the object and not generally known. By not being generally known (except for the manufacturer and those in confidence with the manufacturer), the authenticity/identity of the object can be assured. The object may contain pit and land data useful to the user of the object (e.g., CD, DVD, or the like); however, such pit and land audio and video data does not inform the manufacturer or anyone else of the authenticity/identity of the object. It only is the coded message of the present invention that contains such authentication/identification information (data) and that is within the scope of the present invention.

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Thus, the message that is conveyed by the pit and land code is not just any message; but, rather, it is a data that is generally not known and can be used to uniquely identify the object at hand. Such data enables the authenticity/identity of the object to be ascertained in an effort to combat product piracy and product diversion. Applicant respectfully submits that such a "message" has not been applied to any object via pit and land technology.

Second, Applicant has provided additional layers of protection by overcoating the pit and land code with a coating that contains encapsulated tagged biologic markers. The presence/absence of the markers can be determined, the presence/absence of the biologic

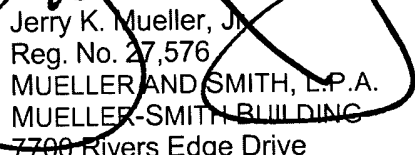
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markers can be determined, and the biologic marker can be read (decoded). These additional layers of protection added to the pit and land code define the invention over the art.

In view of the amendments and remarks submitted herewith, allowance of the claims and passage to issue of this application respectfully is requested.

Respectfully submitted,

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